

## CCRB INVESTIGATIVE RECOMMENDATION

|                                                  |                                                               |                            |                                                        |                                    |                                 |
|--------------------------------------------------|---------------------------------------------------------------|----------------------------|--------------------------------------------------------|------------------------------------|---------------------------------|
| Investigator:<br>Matthew Donaghy                 | Team:<br>Squad #14                                            | CCRB Case #:<br>202004255  | <input checked="" type="checkbox"/> Force              | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|                                                  |                                                               |                            | <input type="checkbox"/> Abuse                         | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Friday, 05/29/2020 9:20 PM   | Location of Incident:<br>In the vicinity of 360 Dekalb Avenue | Precinct:<br>88            | 18 Mo. SOL<br>11/29/2021                               | EO SOL<br>5/4/2022                 |                                 |
| Date/Time CV Reported<br>Mon, 06/01/2020 2:20 PM | CV Reported At:<br>IAB                                        | How CV Reported:<br>E-mail | Date/Time Received at CCRB<br>Mon, 06/15/2020 11:45 AM |                                    |                                 |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| [REDACTED]         | [REDACTED] | [REDACTED]   |
| [REDACTED]         | [REDACTED] | [REDACTED]   |

| Subject Officer(s)       | Shield | TaxID  | Command |
|--------------------------|--------|--------|---------|
| 1. CPT William Gallagher | 00000  | 925327 | CPK PCT |

| Witness Officer(s)   | Shield No | Tax No | Cmd Name |
|----------------------|-----------|--------|----------|
| 1. LT Michael Fisher | 00000     | 933516 | CPK PCT  |

| Officer(s)              | Allegation                                                              | Investigator Recommendation |
|-------------------------|-------------------------------------------------------------------------|-----------------------------|
| A.CPT William Gallagher | Force: Captain William Gallagher used pepper spray against individuals. | [REDACTED]                  |

## Case Summary

On June 1, 2020, § 87(2)(b) of the § 87(2)(b) reported this complaint to IAB on behalf of § 87(2)(b) after receiving an email from § 87(2)(b) concerning this incident. On June 16, 2020, the CCRB received this complaint from IAB.

On May 29, 2020, at approximately 9:20 p.m., § 87(2)(b) was attending a protest on Dekalb Avenue between Classon Avenue and Saint James Place in Brooklyn. As § 87(2)(b) approached the vicinity of 360 Dekalb Avenue in Brooklyn, § 87(2)(b) observed Captain William Gallagher of the Central Park Precinct pepper spray multiple unidentified civilians (**Allegation A: Force,** § 87(2)(g))

§ 87(2)(b) (Board Review 01). According to the New York State Office of Court Administration, there is no defendant found on file regarding § 87(2)(b)'s arrest during this incident (Board Review 02).

§ 87(2)(b) provided cell phone video she recorded of this incident (Board Review 03). The CCRB also obtained body-worn camera (BWC) footage of this incident from Captain Gallagher (Board Review 04) (Board Review 17) (Board Review 18) (Board Review 19) and Lieutenant Michael Fisher (Board Review 05), also of the Central Park Precinct, the relevant aspects of which are discussed in further detail below.

## Findings and Recommendations

### Allegation (A) Force: Captain William Gallagher used pepper spray against individuals.

In her initial email to the Brooklyn District Attorney's office (Board Review 06), § 87(2)(b) wrote that during the May 29, 2020, protest outside of the 88<sup>th</sup> Precinct stationhouse in Brooklyn, she recorded a video of an officer, identified by the investigation as Captain Gallagher, pepper spray multiple individuals in a crowd of protestors. § 87(2)(b) stated that she was not pepper sprayed herself because she shielded herself with a protest sign. The CCRB contacted § 87(2)(b) and § 87(2)(b) agreed to provide her cell phone video, but she stated that she was not willing to provide a statement to the CCRB.

§ 87(2)(b) sent her cell phone video to the CCRB, which captured this incident (Board Review 03). At timecode 00:57, Captain Gallagher can be seen walking between a line of police officers and a crowd of civilians, including § 87(2)(b). At timecode 01:01, Captain Gallagher points a small handheld object at multiple individuals in the crowd of protestors while walking, though due to the lighting conditions and quality of the video, the object cannot clearly be seen. However, as captured at timecode 1:05 of the video, and preserved in a screen-capture (Board Review 07), the object appears to emit a red light.

During his CCRB interview Captain Gallagher stated that on May 29, 2020, he responded to an emergency mobilization and was sent to the 88<sup>th</sup> Precinct stationhouse in Brooklyn in response to reports of a large crowd attempting to damage the stationhouse. Upon arriving on scene, both Captain Gallagher and one of the officers under his command, Lieutenant Fisher, stated that they observed a large organized crowd of protestors in the immediate vicinity of the 88<sup>th</sup> Precinct stationhouse, and further observed officers on scene physically push protestors away from the stationhouse. Captain Gallagher believed that the protestors were attempting to damage or take over the 88<sup>th</sup> Precinct stationhouse. Both Captain Gallagher and Lieutenant Fisher observed that individuals in the crowd were throwing bottles, bricks, and other objects towards officers.

During this incident, Captain Gallagher was struck in the head by an unknown thrown object, causing a laceration and bleeding to his ear, as documented in a Line of Duty Injury report (Board Review 08).

Both Captain Gallagher and Lieutenant Fisher stated that, after arriving on scene, they assisted officers in attempting to push the crowd of protestors away from the 88<sup>th</sup> Precinct

stationhouse. Captain Gallagher stated that, although he was equipped with pepper spray, he did not deploy it at any point during this incident while attempting to disperse the protestors. Lieutenant Fisher stated that he did not observe any officer deploy pepper spray during this incident.

IAB returned negative results for any TRI report prepared in relation to § 87(2)(b) (Board Review 09) or for any incident that occurred on Dekalb Avenue in the 88<sup>th</sup> Precinct between May 28, 2020, and May 30, 2020 (Board Review 10).

The CCRB obtained BWC video recorded by Lieutenant Fisher during this incident (Board Review 05), that appears to capture the same moment as § 87(2)(b)'s cell phone video (Board Review 03). In Lieutenant Fisher's BWC footage, at timecode 13:44, Captain Gallagher can be seen holding a small black object in his hand and then, starting from approximately the midpoint of Dekalb Avenue, Captain Gallagher walks down a line of protestors while pointing object in the faces of multiple individuals. As in § 87(2)(b)'s video, the object is too small, and the lighting conditions are too dark to more clearly see it. However, no visible spray or discharge can be seen to emanate from the object. One unidentified individual in the crowd turns his head away from the object when Captain Gallagher points the object at him and states, "Get that shit out of my face!" However, that individual does not otherwise appear to be in pain after Captain Gallagher walks past him, and numerous other individuals in the crowd who Captain Gallagher points the object at do not appear to recoil or to be in distress after having Captain Gallagher's object pointed at them.

Both Captain Gallagher and Lieutenant Fisher's stated during their CCRB interviews, prior to being presented with the video recorded by § 87(2)(b) or with Lieutenant Fisher's BWC footage, that Captain Gallagher removed his BWC from his person, held it in his hand, and pointed it at protestors on at least one occasion during this incident. When presented with Lieutenant Fisher's BWC footage, both Captain Gallagher and Lieutenant Fisher stated that the object Captain Gallagher was seen holding in that footage was his BWC, which he was using to record protestors.

A review of additional BWC footage provided by NYPD Legal Bureau to the investigation found no video recorded by Captain Gallagher at the time of the alleged deployment of pepper spray (Board Review 04) (Board Review 17) (Board Review 18) (Board Review 19). However, in another video recorded by Captain Gallagher during this same protest (Board Review 04), at timecode 00:30, Captain Gallagher holds his BWC in his hand and points it at protestors in his immediate vicinity while stating to each of them that he "Got [them] on camera!" This video was recorded approximately three minutes after the alleged deployment of pepper spray.

Patrol Guide Procedure No. 211-01 (Board Review 13) dictates that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, otherwise protect life, when it is reasonable to place a person in custody, or to prevent escape from custody. Patrol Guide Procedure No. 221-07 (Board Review 14) states that officers can use pepper spray to gain control of persons who are actively resisting arrest and to establish control of a subject attempting to flee from arrest or custody. Officers are to avoid discharging pepper spray indiscriminately over a large area for disorder control.

Though § 87(2)(b) stated in an email to the Brooklyn District Attorney's office that she observed Captain Gallagher deploy pepper spray, she refused to provide a more detailed statement to the CCRB regarding this incident. Though § 87(2)(b)'s cell phone video and Lieutenant Fisher's BWC footage each show Captain Gallagher pointing a small black object towards multiple protestors, no discharge of pepper spray can be seen emanating from that object in any of the videos. Captain Gallagher and Lieutenant Fisher both denied that Captain Gallagher deployed pepper spray during this incident, and further stated that the small black object captured in both § 87(2)(b)'s cell phone video and Lieutenant Fisher's BWC footage was Captain Gallagher holding his body-worn camera, which is consistent with both the red light that the object appeared to emit (Board Review 07) and with the way that Captain Gallagher used his BWC only a few minutes later during this same incident (Board Review 04). § 87(2)(b), § 87(2)(g)

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## Civilian and Officer CCRB Histories

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## **Mediation, Civil and Criminal Histories**

Squad No.: 14

Investigator: Matthew Donaghy Inv. Matthew Donaghy January 5, 2021  
Signature Print Title & Name Date

Squad Leader: Cassandra Fenkel      IM Cassandra Fenkel      January 6, 2021  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_